IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeals No. 17/93, 341/97 & 110 of 1992.
Date of Decision: 20.8.2007

(i) Cri. Appeal No. 17 of 1993.

State of H.P. — Appellant.

Versus

Radha Krishan. — Respondent.

For the Appellant : Mr S.D.Vasudeva, Addl. Advocate General.
For the respondent : Mr.Vinod Gupta, Advocate, vice counsel for the respondent.

ii) **Cri. Appeal No. 341 of 1997**.

State of H.P. — Appellant.

Versus

Sunder Singh and another. — Respondents.

For the appellant : Mr S.D.Vasudeva, Addl. Advocate General.
For the respondents : Mr R.K.Gautam, Senior Advocate, with Mr. Anurag Shrama, Advocate.

iii) **Cri. Appeal No. 110 of 1992**.

Bittu alias Shiv Raj. — Appellant.

Versus

State of H.P. — Respondent.

For the appellant Mr.T.R.Chandel, Advocate.
For the respondent Mr S.D.Vasudeva, Addl. Advocate General.

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Hon'ble Mr. Justice Surjit Singh, J.
Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

Surjit Singh, J. (oral)

Heard and gone through the record. The three appeals are being disposed of by a common judgment, as they arise out of the same judgment of the trial Court, i.e, judgment dated 26-8-1992 whereby out of

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

the three accused, namely, Sunder Singh, Radha Krishan alias Durga Singh and Bitu alias Shiv Raj, sent up for trial for offences under Section 302 and 201 read with Section 34, Indian Penal Code, two namely, Sunder Singh and Bitu were convicted of offence under Section 323, I.P.C. and sentenced to under-go simple imprisonment for a period of one year and the third one, namely, Radha Krishan was acquitted. Appeal No. 341 of 1997 has been filed by the State seeking the conversion of conviction of accused Sunder Singh and Bitu alias Shiv Raj from 323 I.P.C to 302 read with Section 34, I.P.C. Appeal No. 17 of 1993 has also been filed by the State seeking reversion of acquittal of accused Radha Krishan and his conviction for offence under Section 302 read with Section 34, I.P.C. Third appeal No. 110 of 1992 has been filed by Bitu alias Shiv Raj seeking reversion of his conviction under Section 323, I.P.C. and his acquittal.

Relevant facts may be summed up thus: Prior to the date of occurrence (date of occurrence is 8th August, 1991), deceased Tulsi Dass and accused Sunder Singh had some dispute. Sunder Singh had been accused by Tulsi Dass of having stolen a sum of rupees 1200/- from his pocket. Sunder Singh denied the accusation. However, there had been some settlement and Sunder Singh was made to pay the aforesaid amount of money to Tulsi Dass which implied that Sunder Singh had committed theft of the said money. Sunder Singh felt humiliated and insulted because of such implication. On 8th August, 1991, deceased went to see a fair in village Seri where all the accused met him and they together went to the house of PW2 Durga Nand with a bottle of liquor. After consuming the liquor, the accused and the deceased happened to have a brawl, when Sunder Singh raised the issue of his humiliation on account of accusation of theft. Accused Bitu alias Shiv Raj gave a slap on the face of the deceased while accused Sunder Singh kicked him. Durga

Nand PW2 intervened and got them separated. The accused then left in the direction of their house while the deceased went towards his own house. Their villages are situated in opposite direction. The incident had taken place during night time. Next morning, dead body of Tulsi Dass was found lying down a precipice known as “Diun Dhank”. The matter came to light when the deceased did not return home and his nephew Jyoti Lal (PW1) started searching for him. He came to know from a daughter-in-law of Durga Nand (PW2) that the deceased and the accused had visited their house on the night of 8th August, 1991 and had a brawl after consuming liquor. The case was registered against the appellants. Police conducted the inquest. Dead body was sent to the Government Hospital for post mortem examination. The Doctor observed the following ante mortem injuries on the dead body:

> “1. There was a bone deep lacerated wound with irregular edges 3 cm above the middle of the right eye brow over the right forehead 6 cm. x 7 cm, in bone deep. There was evidence of bleeding, that is clotted blood was present. In the exposed frontal bone almost in the middle was a round depressed fracture of the frontal bone, size 2.5 cm x 2 cm. This wound was anti mortem in character.
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> 2. There was a cut lacerated wound over the left scalp 5.5. cm. from the left pinna (upper fixed point) running from front to back covered with clotted blood 6 cm x 5 cm bone deep, underlying bone was fractured, the soft tissue surrounding the edges of the wound had effused blood in it (clotted). Edges were gaped. It was an anti mortem wound.
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> 3. There was a cut lacerated wound over the right occipital region with gaping edges covered with clotted blood, 2.5 cm from mid line, 3 cm from the external occipital protuberance size 3 cm x 3 cm x bone deep.
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> 4. A&.B. There were two cut lacerated wound over the right temporal/parital area, with 4 (A). This wound

was 3.5 cm above the upper fixed point of external ear size was 3 cm x 2 cm x bone deep, clotted blood present and the wound 4 (b) was bone deep 2 cm in front of the wound described as 4 (a) and its size was 4 cm x 3 cm x bone deep, clotted blood was present. The edges of right pinna and tragus was covered with clotted blood and lacerated. The wounds were anti mortem in character. There was no evidence of any strangulation. The face was smeared with blood and buccal mucosa especially opposite incisors and canine were lacerated.

5. There was a bruise over right knee 1 cm above the tibial tuberosity 1.5 cm x 1 cm in mide line anteriorly, brown, and on opening the skin and the deeper tissues there was evidence of coagulation, effused blood into the sub cuttoneous tissue (Anti mortem).

6. There was an abrasion over the right knee 1 cm above injury No.5. It was 1 cm x 1 cm superficial clotted blood was present".

Accused were interrogated when they were in Police custody. Accused Sunder Singh allegedly made a statement leading to the discovery of Danda Exhibit P12. Doctor opined that the injuries which he noticed on the dead body could have been caused by means of that danda. Police also took into possession the shirt of accused Sunder Singh and got it examined from the Chemical Examiner. The said examiner reported that it bore stains of human blood of Group-A. Blood group of the deceased was also A-positive.

The trial Court charged and tried all the three accused for offences under Section 302 and 201 I.P.C. At the end of the trial, two accused were convicted and sentenced, while the third one was acquitted, as aforesaid.

We have heard the learned counsel representing the State and the accused and have also been taken through the record, particularly the

testimony of Durga Nand (PW2), the eye witness, & Daulat Ram (PW5) and Jagdish Chand (PW9) in whose presence accused Sunder Singh allegedly made the disclosure statement leading to the discovery of the danda Exhibit P12.

Daulat Ram in his testimony as PW2 stated that after the drunken brawl during which the deceased was slapped by Bitu alias Shiv Raj and kicked by accused Sunder Singh, the accused left in the direction of their village Majhali while deceased went towards his own village named Siarla and that the two villagers are situated in opposite directions. The witness stated that Murki Lal (PW8) and one Kartar Singh were also at his place when the brawl took place. Murki Lal, however, did not support the prosecution version. He stated that when he went to the house of Durga Nand, no body other than Durga Nand and his family members was there. In view of the aforesaid, evidence of PW2 Durga Nand which has remained unchallenged in the cross-examination, we find no fault with the finding of the trial Court that accused Bitu alias Shiv Raj and accused Sunder Singh caused hurt to the deceased and thereby committed an offence, punishable under Section 323, I.P.C.

Learned counsel representing accused Bitu alias Shiv Raj who has filed Appeal No. 110 of 1992, seeking reversal of the finding of his conviction under Section 323, I.P.C., says that this accused was below twenty-one years of age at the time when the judgment of conviction was passed and therefore, in view of the provision of Section 6 read with Section 3 of the Probation of Offenders Act, he being below twenty one years of age, could not have been sentenced and was entitled to be released after admonition. Record shows that the said accused was only eighteen years of age at the time when the judgment was delivered by the trial Court and, therefore, in view of the mandate of Section 6, he could

not have been sentenced. Hence we accept this submission of the learned counsel for the said accused.

Another submission made on behalf of accused Bitu alias Shiv Raj is that he gave just one slap to the deceased during the course of drunken brawl and at that time he was just seventeen years of age and the quantum of compensation of rupees 4000/- ordered to be paid by him to the dependents of the deceased by the trial court is grossly on the higher side. He submits that even a civil Court could not have awarded such a huge amount of compensation just for one slap given by a young lad while under the influence of liquor. We find some merit in this submission also and reduce the amount of compensation to rupees 1000/- only.

Learned Additional Advocate General has submitted that besides the testimony of Durga Nand (PW2) regarding the initial brawl at his place, there is circumstantial evidence at least against Sunder Singh suggesting that he committed the offence punishable under Section 302 I.P.C. The circumstances pointed out by him are (a) recovery of Danda Ext. P12 at the instance of the said accused and (b) presence of blood stain (s) on his shirt.

Evidence with regard to the disclosure statement led by the prosecution is self-contradictory. A memo of the alleged disclosure statement made by accused Sunder Singh was prepared by the Police officer concerned. The same is Exhibit PF. This memo is attested by two persons, namely Jagdish Chand (PW9) and one Pujya Dev. The prosecution did not examine Pujya Dev. Jagdish Chand while appearing in the witness box as PW9 stated that the disclosure statement was made by accused Sunder Singh in the presence of Daulat Ram (PW5) and himself. This he stated in his cross-examination. No doubt in the examination-in-chief he stated that statement Ext. PL was attested by him

and Pujya Dev but he did not say that the statement was made by the accused, when Pujya Dev was there. On the contrary, he categorically stated in the cross-examination that only he and Daulat Ram were present when the disclosure statement was made. However, Memo of disclosure statement Ext. PL does not bear the signatures of Daulat Ram. Daulat Ram, whom the prosecution has examined as PW5, even though stated that disclosure statement was made by Sunder Singh in his presence but his statement cannot be believed for two reasons, firstly, the memo of statement Ext. PL is not attested by him as a witness, secondly, he says that this statement was made by the accused Sunder Singh in his presence and in the presence of Pujya Dev and not in the presence of PW9 Jagdish Chand. Apart from the above stated position, Daulat Ram (PW5) in his cross-examination has stated that Memos Ext. PL, PM and PN were prepared and signed in one go at the Police station. Ext. PL, as already noticed, pertains to the disclosure statement made by Sunder Singh, Memo Ext. PM is with regard to the recovery of danda pursuant to the disclosure statement. Two memos could not have been prepared simultaneously at the police station. This itself suggests that the evidence with regard to the disclosure statement and the recovery of danda is fabricated.

The circumstance regarding presence of stain (s) of blood on the shirt of accused Sunder Singh has been dis-believed by the trial Court with the observation that when this shirt was taken into possession vide Memo Ext. PH, there was no stain thereon because in the said memo, it is not mentioned that it bore any stain (s), leave alone a stain of blood. PW5 Daulat Ram in whose presence this shirt was taken into possession also does not say that when the shirt taken into possession, it bore any blood stain (s). The view taken by the learned trial Court with regard to

this circumstance cannot be said to be perverse in view of the above stated evidence.

As a result of the aforesaid discussion, both the appeals, i.e, appeal No. 17 of 1993 and 341 of 1997, filed by the State are dismissed. The third appeal filed by Bitu alias Shiv Raj is partly accepted. While his conviction under Section 323, I.P.C. recorded by the trial Court is maintained, the sentence awarded by the trial Court is set aside and the said accused-appellant is administered admonition. The amount of compensation ordered to be paid by him is also reduced from 4000/- to 1000/-.

(Surjit Singh)
Judge.

(Surinder Singh)
Judge.

August 20, 2007.
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